

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

ORDER
Crim. No. 05-97

Charles Petersen (01), and
Karen Petersen (02),

Defendants.

John F. Docherty, Assistant United States Attorney for and on behalf of Plaintiff.

Scott Tilsen, Acting Federal Public Defender for and on behalf of Defendant Charles Petersen.

Paul Schneck, Esq. for and on behalf of Defendant Karen Petersen.

This matter is before the Court upon Defendants' motion for judgment of acquittal pursuant to F.R.C.P. 29(a) as to Count I of the Indictment.

Count I charges the Defendants with Conspiracy to Impair or Impede the Lawful Functioning and Due Administration of the Internal Revenue Service in violation of Title 18 U.S.C. § 371. Such conspiracies have been referred to as a *Klein* conspiracy. United States v. Ervasti, 201 F.3d 1029, 1037 (8th Cir. 2000). The Eighth Circuit has held that a conviction with respect to a *Klein* conspiracy must be based on evidence that the defendant defrauded the United States, such

as evidence of the falsification of IRS documents. Ervasti, at 1038.

In this case, the government did not produce evidence of falsified documents, or other evidence to show that the Defendants intended to defraud the United States. Rather, the evidence showed that the Defendants evaded the payment of taxes through the use of a sham trust, which conduct was the basis for Count II of the Indictment. As the evidence is insufficient to support a conviction for Count I, such Count must be dismissed.

IT IS HEREBY ORDERED that Defendants' Motion for Judgment of Acquittal Pursuant to F.R.C.P. 29(a) is GRANTED and Count I is dismissed.

Date: March 20, 2006

s/Michael J. Davis
Michael J. Davis
United States District Court